



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 11 OF 2015**

**REPUBLIC.....PROSECUTOR**

**VS**

**MORRIS KIMATHI.....ACCUSED/APPLICANT**

**RULING**

Before me is a Notice of Motion Application dated 20th March 2015 and brought pursuant to the provisions of Article 49 (1) (h) of the Constitution of Kenya, where the accused/applicant seeks to be released on bail/bond pending trial.

The gist of the application is that the accused person has a constitutional right to be released on bail/bond pending trial, that the accused has a right to be presumed innocent until the contrary is proven, that the accused person shall abide by all the terms and conditions that the court may set; that the accused person shall attend court whenever he is required to do so; that the accused's immediate family members are ready and willing to stand surety for the applicant and that the accused is fully aware of the likely consequences should he abscond.

The accused person further reiterated the same grounds in his supporting affidavit to the application. When the application came up for hearing on 8<sup>th</sup> July 2015, Mr. Kimathi, Counsel for the accused person sought to rely on the supporting affidavit to the application filed by the accused person on 20<sup>th</sup> March 2015. Mr. Musyoka, Counsel for the State opposed the application and sought to rely on the replying affidavit sworn by IP Paul Mwei, the investigating officer in this case. He deposed that on the night of 11<sup>th</sup> May 2014, the accused person and another who was still at large, murdered the deceased and fled after the act. He further deposed that the accused person was a flight risk having fled after the act and that he was arrested on 31<sup>st</sup> January 2015, seven months after committing the crime and therefore there was a likelihood of the accused person absconding the jurisdiction of the court if granted bail as evidenced by the conduct of the other accused person who is still at large. He urged this honourable court to find that there were compelling reasons as to why the accused person should not be released on bail and exercise its discretion and deny accused person bond.

According to a pre- bail report filed in court on 7<sup>th</sup> July 2015, the accused person was not well known since he was not born in the area where the family currently resides and he rarely goes home. It was further stated that those who knew him described him as very dangerous and a threat to the community (emphasis mine) and that he had no fixed abode for it was not known where he stays or his occupation. The victim's family who included his father, mother and young brother were very bitter and were opposed to the accused person being released on bond saying that the memories of their loved one was

still very fresh in their minds and they felt that the accused person if released on bond was likely to interfere with witnesses.

I have considered this application, submissions by counsels and the pre bail report. Chesoni J (as he then was) in the case of **Ng'ang'a vs. Republic 1985 KLR 451** enunciated the principles to be considered by the court in deciding whether to released an accused person on bail/bond as inter alia as follows:

1. Whether the accused will turn up for his trial;
2. The seriousness of the charge;
3. Character and antecedents of the accused person;
4. Whether the accused will interfere with witnesses.

Even though an arrested person has a Constitutional right to bail/bond pursuant to Article 49 (1) (h), the said right is not absolute. The same right is curtailed by the same provision which provides that an arrested person shall not be granted bond if there are compelling reasons. Though the Constitution does not define what compelling reasons are, each case would depend on its own circumstances.

The Investigation Officer deponed that the accused person was a flight risk since he immediately fled after the incident and was only arrested seven months after the incident and that his co-accused was still at large; that there was a likelihood of the accused person absconding from the jurisdiction of this court. The offence was committed on 11/5/2014 and accused was arrested about 2/2/2015. There was no response to this allegation. Accused did not explain his disappearance and the lapse of time. According to the pre-bail report, he is also said to be a rare visitor to his home and having no fixed abode. In my view, he is a flight risk and is unlikely to turn up for his trial. In addition, the pre-bail report seems to cast aspersions on accused's character.

I am satisfied that there are compelling reasons not to admit the accused person to bond/bail. I decline to grant accused person bail/bond. The accused person shall remain in custody pending his trial.

**DATED, SIGNED AND DELIVERED THIS 23<sup>RD</sup> DAY OF SEPTEMBER, 2015.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT**

Mr. Musyoka for State

Mr. Kimathi for Accused

Faith, Court Assistant

Present, Accused